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(d) The bank has substantially the same assets and liabilities as the holding company had on a consolidated basis prior to the transaction.

[73 FR 22243, Apr. 24, 2008]

§ 16.15 Form and content.

(a) Any registration statement filed pursuant to this part must be on the form for registration (17 CFR part 239) that the bank would be eligible to use were it required to register the securities under the Securities Act and must meet the requirements of the Commission regulations referred to in the applicable form for registration. A filer should consult the Commission's Securities Act Industry Guide 3—Statistical Disclosure by Bank Holding Companies (17 CFR 229.801(c) and 231) for guidance on appropriate disclosures when preparing registration statements.

(b) Any registration statement or amendment filed pursuant to this part must comply with the requirements of Commission Regulation C (17 CFR part 230, Regulation C—Registration), except to the extent those requirements conflict with specific requirements of this part.

(c) In addition to the information expressly required to be included in the registration statement by paragraphs (a) and (b) of this section, the registration statement must include any additional material information that is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(d) Notwithstanding paragraph (a) of this section, the registration statement for securities issued by a bank that is not in compliance with the regulatory capital requirements set forth in part 3 of this chapter must be on the Form S-1 (17 CFR part 239) registration statement under the Securities Act.

(e) Notwithstanding paragraph (a) of this section, a national bank in organization pursuant to § 5.20 of this chapter shall not be required to include audited financial statements as part of its registration statement for the offer and sale of its securities, unless the OCC determines that factors particular to the proposal indicate that inclusion of such statements would be in the interest of investors or would further the

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safe and sound operation of a national bank.

[59 FR 54798, Nov. 2, 1994, as amended at 73 FR 12010, Mar. 6, 2008]

§ 16.16 Effectiveness.

(a) Registration statements and amendments filed with the OCC pursuant to this part will become effective in accordance with sections 8(a) and (c) of the Securities Act (15 U.S.C. 77h(a) and (c)) and Commission Regulation C (17 CFR part 230, Regulation C—Registration).

(b) The OCC will deem registration statements and amendments that become effective pursuant to paragraph (a) of this section to be declared effective. If the OCC deems a registration statement to be declared effective, the OCC will also deem the prospectus that was filed as a part of that registration statement to be declared effective.

§ 16.17 Filing requirements and inspection of documents.

(a) Except as provided in paragraph (b) of this section, all registration statements, offering documents, amendments, notices, or other documents must be filed with the Securities, Investments, and Fiduciary Practices Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(b) All registration statements, offering documents, amendments, notices, or other documents relating to a bank in organization must be filed with the appropriate District office of the OCC.

(c) Where this part refers to a section of the Securities Act or the Exchange Act or a Commission rule that requires the filing of a notice or other document with the Commission, that notice or other document must be filed with the OCC.

(d) Unless otherwise requested by the OCC, any filing under this part must include four copies of any document filed. Material may be filed by delivery to the OCC through use of the mails or otherwise. The date on which documents are actually received by the OCC will be the date of filing of those documents, if the person filing the documents has complied with all requirements regarding the filing, including

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the submission of any fee required under § 16.33 of this part.

(e) Any filing of amendments or revisions must include at least four copies, two of which are marked to indicate clearly and precisely, by underlining or in some other appropriate manner, the changes made.

(f) The OCC will make available for public inspection copies of the registration statements, offering documents, amendments, exhibits, notices or reports filed pursuant to this part at the address identified in § 4.17(b) of this chapter.

§ 16.18 Use of prospectus.

(a) No person shall use a prospectus or amendment declared effective by the OCC more than nine months after the effective date unless the information contained in the prospectus or amendment is as of a date not more than 16 months prior to the date of use.

(b) If any event arises, or change in fact occurs, after the effective date and that event or change in fact, individually or in the aggregate, results in the prospectus containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the prospectus not misleading under the circumstances, then no person shall use the prospectus that has been declared effective under this part until an amendment reflecting the event or change has been filed with and declared effective by the OCC.

§ 16.19 Withdrawal or abandonment.

(a) Any registration statement, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal must be signed and state the grounds upon which it is made. The OCC will not remove any withdrawn document from its files, but will mark the document *Withdrawn upon the request of the registrant on (date)*.

(b) When a registration statement or amendment has been on file with the OCC for a period of nine months and has not become effective, the OCC may, in its discretion, determine whether the filing has been abandoned. Before determining that a filing has been abandoned, the OCC will notify the filer that the filing is out of date and

must either be amended to comply with the applicable requirements of this part or be withdrawn within 30 days after the date of notice. When a filing is abandoned, the OCC will not remove the filing from its files but will mark the filing *Declared abandoned by the OCC on (date)*.

§ 16.30 Request for interpretive advice or no-objection letter.

Any person requesting interpretive advice or a no-objection letter from the OCC with respect to any provision of this part shall:

(a) File a copy of the request, including any supporting attachments with the Securities, Investments, and Fiduciary Practices Division at the address listed in § 16.17;

(b) Identify or describe the provisions of this part to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(c) Include with the request a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 16.31 Escrow requirement.

The OCC may require that any funds received in connection with an offer or sale of securities be held in an independent escrow account at an unrelated insured depository institution when the use of an escrow account is in the best interests of shareholders.

§ 16.32 Fraudulent transactions and unsafe and unsound practices.

(a) No person in the offer or sale of bank securities shall directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a bank.